



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201116030**
Release Date: 4/22/2011

Date: January 27, 2011

UIL: 501.06-00; 501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(6).

We made this determination for the following reason(s):

You are organized and operated to promote a particular brand on behalf of your members who are all dealers of that particular brand. Your activities are not directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for your members.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: January 27, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

C = Name of Brand
D = Name of Brand
E = Name of Organization
F = Name of Brand
O = Name of Company
P = Name of State
S = Name of County
T = Date

UIL:

501.06-00
501.06-01

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(6) of the Code? No for the reasons explained below.

Facts

Your information submitted indicates that you were incorporated under the laws of the State of P on T.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

The purpose clause in your Articles of Incorporation states "the specific purpose of this corporation is to advance the brand image and recognition of the C, D, and O brands of E vehicles through cooperative advertising efforts of the S county vehicle dealers representing those brands."

The activity description submitted with your application affirms the purpose clause in your Articles of Incorporation by stating that your activities consist of promoting joint interests of its member dealers and dealerships and will use an outside advertising company to promote C, D, and F dealers in the S area. The activity narrative goes on to say that the specific purposes of your organization are to advance the brand image and recognition of the C, D, and F through cooperative advertising efforts of the S county vehicle dealers representing those brands and advertising activities are conducted by the organization on behalf of the members on a continual basis in the S area. The activity is limited to those entities actively engaged in the sales and service of new F, C or D vehicles who are duly authorized holders of O's dealer sales and service agreements.

Your membership is limited to dealerships actively engaged in the sales and service of new C, D, and F vehicles who are duly authorized holders of O dealer sales and service agreements who are doing business in the S area and who are participating in a local marketing and advertising program. There is only one class of members. You currently have eleven members. Your activities only benefit your members.

You indicate that Factory contribution comprises 100% of your financial support and that these contributions are reimbursements for advertising costs. You pool the advertising costs which are billed to O under a co-op agreement/program which reimburses the advertising costs. All your members are franchised dealers selling O's products and collectively have signed up for an advertising co-op program with the use of an advertising agency.

As per your bylaws, Article I section 5, in the event a member ceases to engage in the retailing of F, C or D vehicles, its membership shall automatically cease and terminate.

Your bylaws, Article XIII also states that separate accounts will be created for each brand of O represented by the members and shall be titled the Brand account. Each member's contribution shall be deposited into the brand account for the brand the member sells.

Law

IRC 501(c)(6) provides for exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce

or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Revenue Ruling 55-444 states that an organization formed to promote the business of a particular industry that carries out its purposes primarily by conducting a general advertising campaign to encourage the use of products and services of the industry as a whole is exempt from tax notwithstanding that such advertising to a minor extent constitutes the performance of particular services for its members.

Revenue Ruling 56-84 states that an organization, operated primarily for the purpose of promoting, selling and handling the national advertising in its members' publications, is engaged in the performance of particular services for individual members as distinguished from activities for the improvement of the business conditions of its members as a whole and, therefore, is not entitled to exemption from Federal income tax as a business league.

Revenue Ruling 67-77 states that an organization composed of dealers in a certain make of automobile in a designated area is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. Held, the organization is performing particular services for its members and is not entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 67-295 states that an organization composed of businessmen may qualify for exemption where its activities are limited to holding luncheon meetings devoted to a discussion, review, and consideration of the various problems in a particular industry directed to the improvement of business conditions for the industry as a whole.

An organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption under IRC 501(c)(6). Rev. Rul. 83-164, 1983-2 C.B. 95.

The Tax Court held that the American Automobile Association, a national association of individual auto owners and affiliated auto clubs, did not qualify as a business league because the Association's principal activities consisted of securing benefits and performing particular services for members. *American Automobile Association v. Commissioner*, 19 T.C. 1146 (1953).

In *National Muffler Dealers Association v. United States*, 440 U.S. 472 (1979), the Supreme Court held that an association of a particular brand name of muffler dealers did not qualify for IRC 501(c)(6) status because it was not engaged in the improvement of business conditions of a line of business. This effectively settled the "line of business" issue.

In *Guide International Corporation v. United States*, 948 F.2d 360 (7th Cir. 1991), the court concluded that an association of computer users did not qualify for exemption under IRC

501(c)(6) because it essentially benefited users of I.B.M. equipment.

Application of Law

You are not a business league as described in IRC 501(c)(6) because you are not organized to improve business conditions of one or more lines of business as defined under this sub section.

You are not as described in Section 1.501(c)(6)-1 of the Income Tax Regulations because your activities are not directed to the improvement of business conditions of one or more lines of business and you are formed to provide particular services to your members.

You are not similar to the organizations described in Revenue Rulings 55-444 and 67-295 in that your purpose and activities are directed at the promotion of your members' businesses, and therefore the promotion of C, D, and F which are specific brands, not an industry as a whole.

You are similar to the organization described in Revenue Ruling 56-84 in that you are engaged in the performance of particular services for individual members. You are providing advertising for your members who have to be sellers of a particular brand.

You are similar to the organizations in Revenue Ruling 67-77 and 83-164. Like that organization, your membership is restricted to dealers of specific makes of automobiles in a designated area. Your primary purpose is to advertise and promote the products and services of your members.

You are similar to the organization in *American Automobile Association v. Commissioner*, 19 T.C. 1146 (1953) since your sole purpose is to provide particular services to your members.

You are similar to the organization in *National Muffler Dealers Association v. United States*, 440 U.S. 472 (1979), and *Guide International Corporation v. United States*, 948 F.2d 360 (7th Cir. 1991), since your sole purposes is to promote a particular brand.

Applicant's Position

You indicate that you fit best under "other business league as a group of members with a common business interest in promoting O's brand products through a co-operative advertising reimbursement program.

You state that the rulings in Revenue Rulings 56-65, 65-164 and 72-211 support you because you are composed of retail dealers that conduct a general advertising campaign to encourage the use of products and services of O's dealerships in the S area. You also state that you are different from "for-profit" organizations that conduct similar activities in that your purpose is to benefit the members mutually through cooperative advertising efforts. In addition you state that you were incorporated for the purposes of promoting joint advertising interest of its member dealer and dealerships and that the common business interest shared is to advance brand image and recognition of O brand products to improve the relationship between certain dealers and the public.

Service Response to Applicant's Position

Your organization is not promoting the industry as a whole. The information you provided with the application and the subsequent correspondence show that your organization is formed to provide advertising for the benefit of your members who are all dealers of specific brands of products. Therefore you do not meet the definition of operating for the improvement of business conditions of one or more lines of business and you are formed to provide particular services to your members.

Conclusion

You are organized and operated to promote a particular brand on behalf of your members who are all dealers of that particular brand. Your activities are not directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. Accordingly, we conclude that you are not exempt under IRC 501(c)(6).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892